

E-FILED on 02/10/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TOKYO ELECTRON LIMITED,

Plaintiff,

v.

SPANSION, INC.,

Defendants.

No. C-09-00502 RMW

ORDER DENYING MOTION TO PROCEED
EX PARTE

[Re Docket No. 9]


Plaintiff Tokyo Electron Limited ("TEL") seeks to proceed *ex parte* in their application for a right to attach order against Spansion, Inc. ("Spansion"). Under Local Rule 7-10, a party may file a motion ex parte only if permitted by law, and if the party has complied with the applicable provision. Civ. L.R. 7-10. Under the California Code of Civil Procedure § 485.210, a plaintiff

1 seeking a right to attach order *ex parte* must show that grave or irreparable injury would result if the
2 order were delayed until the matter could be heard on notice.

3 TEL states in their motion that irreparable injury will result because Spansion has publicly
4 announced that it has "initiated discussions to begin an organized process of potential balance sheet
5 restructuring opportunities" and will delay making certain payments on other obligations. Notice of
6 Ex Parte Application for Right to Attach Order 4, Ex. C. TEL also states that their right to recovery
7 "cannot seriously be disputed." *Id.* The court is not persuaded that Spansion's initiation of
8 discussions to begin balance sheet restructuring adequately shows that, if Spansion were given
9 notice of TEL's application for a right to attach order, grievous or irreparable injury would result.

10 TEL may therefore re-file the application for a right to attach order for a hearing date in
11 accordance with Local Rule 7-2. The court will consider a motion to shorten time in accordance
12 with Local Rule 6-1 if it is filed.

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16 DATED: 02/09/09



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Plaintiff:**

3 Daniel J. Herling herling@khlaw.com

4 **Counsel for Defendants:**

5 No appearance filed.

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7 Counsel are responsible for distributing copies of this document to co-counsel that have not
8 registered for e-filing under the court's CM/ECF program.

9
10 **Dated:** 02/10/09

JAS
Chambers of Judge Whyte